

**STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES  
BUREAU OF HEARINGS**

In the matter of

Docket No. 2002-532

Office of Financial & Insurance  
Services,

Petitioner

v

Peter Hue Wilcox,  
Respondent

Agency No. 02-925

Agency: Office of Financial &  
Insurance Services

Case Type: Sanction  
Revocation

Issued and entered  
this 5th day of June 2002  
by Robert H. Mourning  
Administrative Law Judge

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

This matter commenced with the issuance of a Notice of Hearing dated March 25, 2002, scheduling a contested case hearing for May 14, 2002. The Notice of Hearing was mailed to Respondent's last known address.

Laurence Wood, a staff attorney, appeared on behalf of Petitioner, Office of Financial & Insurance Services. Neither the Respondent, Peter Hue Wilcox, nor an attorney on behalf of the Respondent appeared at the hearing.

The Notice of Hearing was issued pursuant to allegations by the Petitioner that the Respondent violated the Insurance Code (Code) of 1956, 1956 PA 218, as amended; MCL 500.100 *et seq.*

The hearing was commenced and concluded on May 14, 2002. At the hearing, Attorney Wood requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedures Act (APA),

1969 PA 306, as amended, MCL 24.272, and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA, MCL 24.278.

Section 72 of the APA states, in pertinent part:

- (1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states, in pertinent part:

- (2) Except as otherwise provided by law, disposition may be made of a contested case by . . . default . . .

The Petitioner's motion for default was granted. Further, Attorney Wood made a motion to amend the Factual Allegation and Complaint to conform with the evidence provided in Exhibits 2 and 3. As a result of the default, the factual allegations contained in the Petitioner's Factual Allegation and Complaint were deemed true.

No witnesses testified at the hearing. The Petitioner offered the following exhibits which were admitted into evidence:

Exhibit 1: Uniform Application for Individual Non-Resident License, 11/8/99.

Exhibit 2: Consent Agreement, 4/26/01.

Exhibit 3: Order and Agreement from the State of West Virginia, 4/19/01.

Exhibit 4: Licensed Individual Full History, 11/28/01.

### **ISSUES AND APPLICABLE LAW**

The general issue in this matter is whether the Respondent violated the Code.

The specific issue is whether the Respondent violated Section 1204(4) of the Code.

Section 1204(4) provides that:

After examination, investigation, and interrogatories, the commissioner shall license an applicant if the commissioner determines that the applicant is an employee of, or is authorized in writing to represent, an insurer which is authorized to transact insurance in this state, and the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance the applicant will be licensed to solicit, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an agent, is honest and trustworthy, possesses a good business reputation, and possesses good moral character to act as agent. The commissioner shall make a decision on the application within 60 days after the applicant passes the examination or, if the examination has been waived, within 60 days after receipt of a properly completed application and notice of appointment forms.

### **FINDINGS OF FACT**

The Respondent was properly served with the Notice of Hearing but did not appear. As a result, the Respondent was found in default under Section 78(2) of the APA.

Based upon the granting of the default, the following facts are found:

1. At all relevant times, the Respondent was a licensed nonresident agent.
2. As a licensee, the Respondent knew or had reason to know that Section 1204(4) of the Code requires, at a minimum condition of licensure, that an agent be honest and trustworthy and possess a reasonable understanding of the insurance laws of the State of Michigan.
3. On November 8, 1999, the Respondent submitted an application pursuant to which his nonresident license was issued. Question #2 on the application

asked: "Have you or any business in which you are or were an owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?" The Respondent answered this question with a "No." (Exhibit 1).

4. The Respondent's answer to Question #2 was false because he had paid an administrative fine of \$3,000.00 to the Arizona Department of Insurance on April 26, 1990. (Exhibit 3).

5. Since April 26, 1990, the Respondent, among other sanctions, has paid the following administrative fines: 1) \$250.00 to the Iowa Department of Insurance on December 12, 2000; 2) \$1500.00 to the Insurance Commissioner of the State of West Virginia on April 19, 2001; and 3) \$1500.00 to the Department of Business Regulation of the State of Rhode Island on April 26, 2001. (Exhibit 2).

### **CONCLUSIONS OF LAW**

The principles that govern judicial proceedings apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed) Section 60.48, p 230. The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that the Respondent violated the Code. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich 248 (1987).

Having granted a default on behalf of the Petitioner, it is concluded that the above-listed facts establish that the Respondent did not meet the qualifications for licensure under Section 1204(4) of the Code when he filed his application on November 8, 1999.

Accordingly, the Petitioner has established, by a preponderance of the evidence, that Respondent has violated Section 1204(4) of the Code.

**PROPOSED DECISION**

The Administrative Law Judge recommends that the Commissioner of Financial and Insurance Services issue a Final Decision revoking the Respondent's license as nonresident agent.

**EXCEPTIONS**

The parties may file exceptions to this Proposal for Decision within 20 days after the Proposal for Decision is issued and entered. Any such exceptions should be filed with the Department of Consumer and Industry Services, Office of Financial and Insurance Services, 611 West Ottawa Street, 2<sup>nd</sup> Floor, P.O. Box 30220, Lansing, Michigan, 48909, Attention: Dawn Kobus.

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**Robert H. Mourning**  
**Administrative Law Judge**